

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DENISE D. TOLEDO,

Plaintiff,

v.

Civil No. 15-4312 (JNE/KMM)
ORDER

WARDEN JULIE A. NICKLIN,
FCI, Waseca Warden,

Defendant.

Plaintiff Denise Toledo filed a petition for writ of habeas corpus challenging her 180-month sentence as unconstitutional in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), and seeking a resentencing to 120 months' imprisonment. Dkt. No. 1. In an Amended Report and Recommendation dated July 1, 2016, the Honorable Katherine Menendez, United States Magistrate Judge, recommended that the action be dismissed. No objection to the Report and Recommendation was made. The Court has conducted a de novo review of the record. *See* D. Minn. L.R. 72.2(b). Based on that review, the Court adopts the conclusion of the Amended Report and Recommendation [Dkt. No. 14]. As noted in the Amended Report and Recommendation, Plaintiff also, pursuant to 28 U.S.C. § 2255, moved the United States District Court for the Western District of Missouri to resentence her pursuant to *Johnson*, and that court granted her motion and resentedenced her to 120 months' imprisonment. *Toledo v. United States*, No. 16-cv-3213 (ODS), Order (W.D. Mo. June 8, 2016). Accordingly, Plaintiff's petition before this Court is now moot. *See Miller v. Whitehead*, 527 F.3d 752, 756 (8th Cir. 2008).

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Denise D. Toledo's Petition for Writ of Habeas Corpus [Dkt. No. 1] is DISMISSED AS MOOT.

2. The Motion to Dismiss by Julie A. Nicklin [Dkt. No. 10] is DENIED AS MOOT.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 9, 2016

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge